



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/168960

PRELIMINARY RECITALS

Pursuant to a petition filed September 25, 2015, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a telephonic hearing was held on October 20, 2015.

The issue for determination is whether the agency calculated the petitioner's patient liability correctly.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Desiree Woods, IM Adv.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has been eligible for MA since approximately July 2015 with a patient liability requirement.

3. On August 26, 2015 the agency issued a notice of decision stating that petitioner's patient liability would be \$2004.16. The deductions given him were a \$45 personal allowance, a \$10 health insurance deduction, and the maximum standard home maintenance deduction of \$912.77.
4. Petitioner receives \$2971.93 monthly in Social Security and retirement benefits.

DISCUSSION

In this particular case, petitioner is not challenging the agency's actual calculations as he is not disputing the income and expense figures it used. Instead, he is requesting an exception to the home maintenance expense deduction in his patient liability calculation because his expenses are greater than the standard maximum deduction for such expenses.

MA rules require that after an institutionalized person is determined eligible for MA, an agency must calculate the amount of income the institutionalized person must contribute to defray the cost of care incurred by MA on his or her behalf on a monthly basis. 42 CFR §435.725. Wisconsin law specifically allows only \$45.00 to be retained by institutionalized persons as a personal needs allowance. Wis. Stat. §49.45(7)(a) further provides that "... the recipient shall apply income in excess of \$45.00, less any amount deducted under rules promulgated by the department, toward the cost of care in the facility." (Emphasis added). Based on what was provided at hearing, the personal allowance, the health insurance and the home maintenance expense are the only available deductions to petitioner.

The rules referred to in the above statute are found in the Wisconsin Administrative Code. Wis. Admin. Code §DHS 103.07(1)(d) provides in relevant part as follows:

(1) SPECIAL SITUATIONS OF INSTITUTIONALIZED PERSONS. ...

(d) *Computing income available towards cost of care.* Institutionalized recipients of MA who are determined eligible under s.DHS 103.06 and this section shall apply their available income toward the cost of their care after deducting the income disregards in this paragraph. In this paragraph, "available income" means any remaining income after the following reductions are made:

1. A personal needs allowance, as provided under s. 49.45 (7)(a), Stats., and
2. If employed, the first \$65 and one-half of the remainder of gross earnings;
3. The cost of health insurance;
4. Necessary medical or remedial care recognized under state law but not covered by MA;
5. The actual amount paid by the institutionalized person for support of a person for whom the institutionalized person is legally responsible but not to exceed the appropriate AFDC assistance standard unless the institutionalized person is paying court-ordered support in an amount greater than the AFDC assistance standard in s. 49.19 (11) (a) 1., Stats.; and

6. The monthly cost of maintaining a home when the conditions of s. DHS 103.06 (1) (b) 3. are met, but not to exceed the SSI payment level for one person living in that person's own household.

Emphasis added.

In addition, the *Medicaid Eligibility Handbook (MEH)* §27.7.1, clearly explains the costs which may be reviewed in determining an individual's patient liability toward his cost of care.

After an institutionalized person has been determined eligible for Medicaid, his/her cost of care must be calculated. Cost of care is the amount s/he will pay each month to

partially offset the cost of his/her Medicaid services. It is called the patient liability amount when applied to a resident of a medical institution and cost share when applied to a community waivers client, Pace/ Partnership, or Family Care client. The institutionalized [member](#) will be expected to pay their patient liability to the institution that they are residing in as of the first day of the month.

Calculate the cost of care in the following way:

1. For a Medicaid member in a medical institution who does not have a [community spouse](#), subtract the following from the person's monthly income:
 - a. \$65 and ½ earned income [disregard](#).
 - b. Monthly cost for health insurance.
 - c. Support payments.
 - d. Personal needs allowance.
 - e. Home maintenance costs, if applicable.
 - f. Expenses for establishing and maintaining a court-ordered guardianship or protective placement, including court-ordered attorney and/or guardian fees.
 - g. Medical Remedial Expenses.

With respect to the home maintenance expenses, the *MEH* specifically states,

If an institutionalized person has a home or apartment, deduct an amount from his/her income to allow for maintaining the home or apartment that **does not exceed the [SSI payment level plus the E supplement for one person](#)** (link). The amount is in addition to the personal needs allowance (See [39.4.2 EBD Deductions and Allowances](#)). It should be enough for mortgage, rent, property taxes (including special assessments), home or renters insurance, utilities (heat, water, sewer, electricity), and other incidental costs.

Make the deduction only when the following conditions are met:

1. A physician certifies (verbally or in writing) that the person is likely to return to the home or apartment within six months, and
2. The person's [spouse](#) is not living in the home or apartment.

Deduct this amount for no more than six months. If the person is re-admitted to the institution, grant a six month continuance. A physician must again certify that s/he is likely to return to the home or apartment within six months.

The home maintenance allowance can be granted at any time as long as the person is institutionalized. It is not limited to the first six months of institutionalization.

MEH, §15.7.1 (Emphasis added).

The State has clearly set a limit to the amount of home maintenance expenses that can be considered, and provides no exception to that amount under the statutes. The policy states that it should be enough for mortgage, rent, property taxes, etc. but in petitioner's case, it does not. Even still, there is no exception. Thus, I must find that the agency correctly gave petitioner the correct home maintenance expense deduction under the law, which is currently \$912.77. See *MEH*, §39.4.1. I note that the *MEH* states that the maximum is \$900.77, but the testimony from the agency at hearing was that the \$912.77 was the correct updated amount, and therefore I will not disturb that determination.

Finally, I lack the equitable powers – the ability to change the course of the action based on any fairness argument- to grant the relief sought. See Oneida County v. Converse, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). It is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

I note that there was an additional health insurance expense presented at hearing that had not previously been presented to the agency for the calculation, but the agency agreed that such costs would be considered by them to redetermine petitioner's patient liability for October and ongoing. If the petitioner still disagrees with the new patient liability amount, he may request another appeal.

CONCLUSIONS OF LAW

1. The agency calculated the petitioner's patient liability correctly in the amount of \$2004.16.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

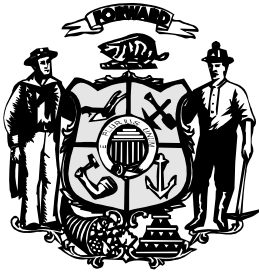
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of December, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 1, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability